

Nos. 10956 and 10984

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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

KINNER MOTORS, INC., RESPONDENT

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

KINNER MOTORS, INC., RESPONDENT

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ON PETITION FOR ENFORCEMENT OF ORDERS OF THE NATIONAL  
LABOR RELATIONS BOARD

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MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
LEAVE TO FILE SUPPLEMENT TO PETITION FOR REHEARING  
AND SUPPLEMENT TO PETITION FOR REHEARING

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**MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR  
LEAVE TO FILE SUPPLEMENT TO THE PETITION FOR RE-  
HEARING**

Comes now the National Labor Relations Board, by its Assistant General Counsel, and respectfully asks leave to file the annexed Supplement to the Board's petition for rehearing previously filed herein.

A. NORMAN SOMERS,  
*Assistant General Counsel,*  
*National Labor Relations Board,*  
*Washington, D. C.*

Dated MARCH 1946.

(1)

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## **SUPPLEMENT TO PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR REHEARING**

*To the Honorable the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:*

Supplementing the Petition for Rehearing previously filed by the National Labor Relations Board in the instant case, the Board respectfully shows the Court as follows:

4. On December 29, 1945, this Court issued its decision in these proceedings in which, as later amended, it directed enforcement of two orders issued by the Board against respondent, as modified, by deletion of Paragraph 1 (c) from each order, the so-called "broad cease and desist" provisions. Thereafter the Board filed a petition for rehearing urging enforcement of its orders in full and suggesting in

the alternative that this Court withhold action on the petition until the Supreme Court issued its decision in *N. L. R. B. v. Cheney California Lumber Co.*, 149 F. 2d 333 (C. C. A. 9), in which the Supreme Court had then granted the Board's petition for writ of certiorari (66 S. Ct. 97). The Supreme Court decided the *Cheney* case on February 25, 1946.

We are filing with this Supplement a Supplement to the Board's Petition for Rehearing in No. 10949, *N. L. R. B. v. Van de Kamp's Holland Dutch Bakers, Inc.* In that Supplement, to which we respectfully refer the Court, we described the Supreme Court's decision and its application to the facts in that case. For the reasons therein stated we believe that the decision is equally applicable here and requires enforcement in full of the Board's orders.

5. With respect to the application of Sec. 10 (e) of the Act, it is equally true here that respondent failed to raise the question of the propriety of the broad cease and desist order in either of these cases. In No. 10984, the Trial Examiner recommended the broad cease and desist provision in his Intermediate Report (R. 47). Although excepting to the affirmative provisions recommended by the Trial Examiner (R. 58), respondent took no exception to the recommended cease and desist provision. In No. 10956, the Trial Examiner's Intermediate Report similarly recommended a broad cease and desist provision (R. 37). Yet respondent's only reference to the recommended order was in its Exception 62 which stated merely that "the evidence and findings of fact and conclusions



of law are insufficient to justify the recommendations” generally (R. 61). In no brief filed with the Board in support of its exceptions and nowhere else in the record did respondent in any way raise any question as to the scope of the Board’s order.

Respectfully submitted.

A. NORMAN SOMERS,  
*Assistant General Counsel,*  
*National Labor Relations Board,*  
*Washington, D. C.*

Dated MARCH 1946.

#### CERTIFICATE OF COUNSEL

Comes now A. Norman Somers, Assistant General Counsel for the National Labor Relations Board, and certifies that he has read and knows the contents of the foregoing Supplement and that said Supplement is filed in good faith, and not for purposes of delay.

A. NORMAN SOMERS,  
*Assistant General Counsel,*  
*National Labor Relations Board.*

MARCH 1946.



